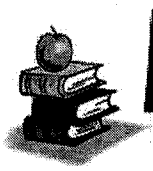

MTSBA

"...fostering excellence in public education through school board leadership."

EXHIBIT 1
DATE 3/12/07
SB 49

TO: House Judiciary Committee

FROM: Lance Melton, Executive Director
Montana School Boards Association

RE: SB49

DATE: Monday, March 12, 2007

The Montana School Boards Association understands the rationale behind Senator Esp's introduction of SB49. However, as written and amended in the Senate, MTSBA continues to oppose the bill for the following reasons:

- The bill will force school districts to regulate and referee family relationships in dysfunctional environments. The caretaker has quasi authority to direct the child's education, until mom or dad shows back up and usurps that authority. The district will have to referee these battles. School districts will undoubtedly get caught up in domestic disputes. Under this bill there will be disputes about who has the right to admit a child to a school and who as the right to access school records. This could cause increased litigation for Montana's public schools. The court system is the rightful place for an affidavit to be filed – not the school district.
- The court should be informed and involved whenever a parent abandons a child and leaves the child with another person. According to the wording of the bill (on page 1), this bill is to address situations where a parent has "temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time." If the parent has abandoned the child and cannot be reached by the relative caretaker, the court needs to be informed of the abandonment and act in a manner that is in the best interest of the child.
- This bill impinges on local control and will impede a school board's rights under Article X, Section 8 of Montana's Constitution to "supervise and control" the schools within their boundaries. This bill gives the parents, caretaker relatives and students the right to determine where the student will be educated and will cause much confusion for our schools. Existing law is clear – A student has the right to attend public school in the district where the parent(s) reside, unless other statutory circumstances exist requiring mandatory attendance under § 20-5-321. If a minor student disagrees with a parent about where the student will be attending school, under this bill, the minor child can go live with a relative thereby being entitled to attend school in the district in which the relative lives.
- This bill will strip school districts of the right to collect tuition from the home district that they are currently collecting right now. That could mean a $1,300-$1,800 per regular education child shortfall for districts that currently collect tuition from the home district for such children. Additionally, should the child have a qualifying disability under the IDEA, such as severe emotional disturbance, the district taxpayers of the district where

- The bill contains other ambiguities, e.g., no definition of "full-time" under Section 1, contact between the parent and caretaker relative – does not require the caretaker to contact the parent. Section 1 and the sample affidavit simply provide that the "caretaker relative is unable to contact the parent . . . "
- The immunity provision needs to be broader than currently written. There should be few if any qualifiers. Nothing would prevent the parents, for example, from initiating a lawsuit against the school for violation of the parents' rights and subjecting the school district and its employees to protracted litigation as a result of following the directives of the caretaker, not the parents. Caretaker relatives should be required to fully indemnify the school district and its employees in the event the school district gets sued as a result of reliance upon the caretaker relative.
- The amendment in Section 2 removing the requirement that the parent provide the department of public health and human services of suspected abuse or neglect won't work. Other provisions of existing law require that a school employee aware of the abandonment of the child report such abandonment to the Department as suspected abuse or neglect. Abandonment of a child is identified as evidence of a criminal violation of Endangering the welfare of children under 45-5-622(5):

  > (5) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; ***abandonment***; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

  The Department should be placed on notice, as should the court, whether a child has been abandoned by a parent. If the paramount interest is the child, the Department should require that the caretaker relative notify them of the abandonment.
- The bill jeopardizes federal funding for schools. The Family Educational Rights and Privacy Act ("FERPA") protects the disclosure of information from educational records to outside third parties without the consent of the parent. Although FERPA defines parent broadly (34 CFR 99.3 -- Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian), if there are disputes between the parent and the caretaker relative (which undoubtedly there will be), the District will be forced to make a call as to whether information should be released to the parent or to the caretaker relative and could be faced with a FERPA violation if they are wrong and disclose information to the caretaker relative over the parent's objection.
- Amending the rules for determining residency (Section 3) will do nothing but create confusion. As it stands, the law is clear for purposes of determining the residence of a child – the current or last known residence of the parent or parents is the residence of the student when determining whether a school district is **required** to educate a child. Amending the rules of residency to include the residence of a caretaker relative will cause many problems for schools in making a determination as to whether the student has a **right** to attend school or whether the student can attend school under a school's discretionary out-of-district policy. Is it bad law to establish a statute that provides that the residence of a caretaker relative is the residence of a minor if the minor is only

residing with the caretaker relative on an interim or temporary basis. This will cause significant confusion for our schools.

- There are no enforcement provisions for a caretaker relative that signs the affidavit knowing that the information is false and/or a parent that that is involved in collusion with the caretaker relative.

For the reasons above, MTSBA respectfully urges the House Judiciary Committee to table Senate Bill 49.

Thank you.